D.B. CIVIL SPECIAL APPEAL NO. 796/2007
(Gopesh Kumar & Ors. Vs. District & Sessions Judge, Pratapgarh)

DATE OF ORDER : 30th August, 2007

HON'BLE MR. JUSTICE P.B.MAJMUDAR
HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. Rakesh Arora for the appellants.

BY THE COURT : (PER MR. MAJMUDAR,J.)

Heard learned counsel for the appellants.

This special appeal is directed against the order dated 20.11.2006 passed by the learned Single Judge in S.B.Civil Writ Petition No.4276/2003. By the impugned order, the learned Single Judge has dismissed the writ petition filed by the present appellants.

In pursuance to the advertisement dated 10th May, 2001, the present appellants applied for recruitment to the post of LDCs. The appellants were selected but they were kept in the waiting list. It is an admitted fact that the Department had already filled in the posts, which were advertised and the present appellants were kept in the waiting list. Learned counsel Mr. Rakesh Arora appearing on behalf of the appellants

submitted that some of the candidates, who were in the waiting list, did not join their duties and, therefore, the appointment order should have been given to the appellants.

The learned Single Judge by giving cogent reasons has found that simply because appellants' names were in the waiting list/select list, no right was created in their favour for selection on the said posts. In our view, the learned Single Judge has rightly found that the selection list was prepared for more posts than against the number of posts which were advertised by the Department. It is required to be noted that the appellants had no legal right to get appointments simply because their names were in the waiting list. The learned Single Judge has rightly observed that simply because selected candidates have not joined, the petitioners have no right to claim appointment simply because there names were placed in the waiting list. In our view, it cannot be said that simply because the appellants were selected and kept in the waiting list, any legal right is created in their favour. The learned Single Judge has relied upon the decision of the Hon'ble Supreme Court in the case of State of U.P. Vs. Bibkhakar Dwivedi & Ors., reported in (2003) 12 SCC 62, while considering somewhat similar question, the Hon'ble Supreme Court has observed in Para 11 of the judgment as under:

> "11. The general principle of law as has been established and followed repeatedly by this Court is that even those candidates whose names are included in the merit list do not have a vested right to be appointed (see Shankarsan Das Vs. Union of India). The decision relied upon by the High Court and which has been cited before us, namely Jai Narain Ram Vs. State of U.P. had been rendered in connection with the case of Scheduled Caste candidates who were in the waiting list could be directed to be appointed against the reserved category when vacancies were created in such reserved category by reason of the successful candidates not joining the post. The reasoning is based upon Article 14 read with Articles 16(1) and (4) of the Constitution."

The learned Single Judge has further held that in the case of Secretary, A.P. Public Service Commission Vs. B.Swapna & Ors., reported in (2005) 4 SCC 154, their Lordships of the Hon'ble Supreme Court while considering the cases in Prem Singh Vs. Haryana SEB, reported in (1996) 4 SCC 544 and State of J&K Vs. Sanjeev Kumar, reported in (2005) 4 SCC 148 held that there are two settled principles of service of law, firstly, there cannot be appointment beyond advertisement and secondly also selection can be altered after the selection process is started.

It is not in dispute that the life of the selection/merit list has been over since long. Considering the fact that the present appellants, whose names were in the waiting list, had no

fundamental right to get appointment on the said posts, as the advertised posts were already filled in, it cannot be said that the learned Single Judge has committed any error in dismissing the writ petition filed by the present appellants.

In our view, there is no substance in this Special Appeal. Accordingly, the Special Appeal stands dismissed in limine. No order as to costs.

(DEO NARAYAN THANVI),J. **(P.B.MAJMUDAR),J.**

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